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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,528	02/17/2006	Seizi Nishizawa	49140104PUS1	5080
2292 7590 07/08/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER GAWORECKI, MARK R				
ART UNIT 2884		PAPER NUMBER		
NOTIFICATION DATE 07/08/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/568,528

**Applicant(s)**

NISHIZAWA ET AL.

**Examiner**

MARK R. GAWORECKI

**Art Unit**

2884

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2 and 6-10 is/are rejected.  
7) ☒ Claim(s) 3-5 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 17 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-85/06)  
Paper No(s)/Mail Date See Continuation Sheet

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :2/17/06, 1/29/07, 5/16/07, 2/27/08.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 17 February 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to in document citation number "CA" has not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Seiji (JP 2000-275105).

With respect to claim 1, Seiji teaches a spectroscopy system (abstract) comprising a pulsed laser light source (114), a splitting unit for splitting the pulsed laser light source into excitation light and detection light (134), a pulsed-light emitting unit configured to emit in the far-infrared wavelengths (paragraph [0011]), a detector configured to detect reflected or transmitted pulsed light from the sample onto which pulsed light is radiated (124), a sample holder for holding a sample (140), and optical systems for guiding the pulsed light from the pulsed

light emitting unit to the sample and guiding reflected or transmitted light from the sample (mirrors, etc. shown in Fig. 3; penetration/reflective light, paragraph [0032]).

Further, Seiji teaches an optical path-length varying unit (delay means, 162, paragraph [0059]) and an optical delay unit (time width setting means and/or frequency setting means, abstract).

With respect to claim 2, Seiji teaches the optical path length varying unit to be a movable reflector (paragraph [0058]).

With respect to claim 9, Seiji, as applied above, shows the use of planar mirrors in entrance and exit optical systems (Fig. 3, on either side of sample, 140).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiji.

With respect to claim 6, Seiji teaches the use of actuators and a stepping motor for controlling the delay means (paragraph [0058]). Although Seiji does not teach a computer control apparatus configured to automatically control a driving device, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to automate the control of the actuators,

since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192.

With respect to claims 7 and 8, Seiji, as applied above, does not specifically teach an auxiliary optical unit that can be replaced. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make any or all parts removable and replaceable in order to easily maintain the working order of the device to avoid costly replacement of the entire device. Further, it would have been obvious to provide optical alignment for an auxiliary optical unit so that the unit may be replaced without a costly, cumbersome, and time-consuming process.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seiji, in view of Nishizawa *et al.* (5,227,861).

With respect to claim 10, Seiji, as applied above, does not specifically teach the use of an aspheric lens. However, such lenses are known in the art and are conventionally used in optical systems for spectroscopy devices. Nishizawa is cited as an example (aspherical mirror, 12).

***Allowable Subject Matter***

7. Claims 3-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 3-5, the prior art of record, as applied above, fails to show the claimed gate member for providing additional optical paths.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. GAWORECKI whose telephone number is (571)272-8540. The examiner can normally be reached on Tuesday through Friday, 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Porta can be reached on (571) 272-2444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 2884

**/Constantine Hannaher/  
Primary Examiner, Art Unit 2884**

/MG/

1 July 2008